



**[6714-01-P]**

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Chapter III**

#### **Statement of Policy on the Development and Review of Regulations and Policies**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Revision of statement of policy.

**SUMMARY:** The FDIC is updating its Statement of Policy entitled, “Development and Review of FDIC Regulations and Policies” (Policy Statement). The Policy Statement articulates the basic principles that guide the FDIC in its promulgation and review of regulations and written statements of policy. The Policy Statement is being revised to more fully reflect the FDIC’s current rulemaking policies and procedures, as well as take into account various organizational changes since the Policy Statement was adopted.

**EFFECTIVE DATE:** [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Munsell St. Clair, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898-8967, or Michelle Borzillo , Legal Division, (703) 562-6083, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC has a longstanding and ongoing commitment to ensure that its regulations and policies achieve legislative and regulatory goals in the most efficient and effective manner possible. As part of that commitment, the FDIC recently undertook a review of its existing Policy Statement, which was adopted in 1998, to determine

what updates and clarifications would be appropriate. As a result of that review, the FDIC Board of Directors adopted revisions to the existing Policy Statement to more fully reflect the FDIC's current rulemaking policies and procedures as well as take into account various organizational changes. These revisions highlight important rulemaking processes and procedures, such as the FDIC's open and transparent rulemaking process, robust interagency coordination, evaluation of regulatory costs and benefits (including consideration of alternatives), and periodic review of existing regulations.

**TEXT:** The text of the revised Policy Statement is as follows:

## **DEVELOPMENT AND REVIEW OF FDIC REGULATIONS AND POLICIES**

### *Statement of Policy*

#### *I. Purpose and Scope.*

The Federal Deposit Insurance Corporation is committed to continually improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently. The purpose of this statement of policy (Policy) is to establish basic principles which guide the FDIC's promulgation and review of regulations and written statements of policy. This Policy applies to regulations and written statements of policy issued by the Board of Directors of the FDIC.

#### *II. Principles for the Development and Review of Regulations and Statements of Policy.*

The following principles guide the FDIC in its development of regulations and written policies:

• **The implications of regulations and statements of policy should be evaluated.** Before issuing or updating a regulation or written statement of policy the FDIC gives careful consideration to the need for such action. Frequently a regulation is required by statute. Alternatively, the FDIC may identify a need for a supervisory tool to implement its statutory obligations, such as maintaining public confidence in the financial system through safety and soundness and compliance supervision, protecting insured depositors, closing failed institutions, and preventing or mitigating systemic risk. The FDIC also may identify a need to clarify its policy for the benefit of the banking industry or the public. To bring different perspectives to the development of a regulation, the FDIC typically assigns staff with different backgrounds or expertise to a regulatory project; such staff may include examiners, economists, lawyers or accountants, depending on the regulation.

Once the need or requirement for a regulation or statement of policy is determined, the FDIC evaluates benefits and costs, based on available information, and considers reasonable and possible alternatives. For many rulemakings, one or more alternatives likely will be available, at least with respect to some aspects of the rule. The main alternatives, once identified as available, should be described and analyzed for their consistency with the statutory or regulatory objectives, effectiveness in achieving those objectives, and burden on the public or industry. In this context, the FDIC seeks to minimize to the extent practicable the burdens which the proposed regulation or policy imposes on the banking industry and the public. For example, new reporting and recordkeeping requirements imposed by a regulation are carefully analyzed. The effect of the regulation or statement of policy on competition within the industry is considered. Particular attention is focused on the impact that a regulation will have on small institutions and whether there are comprehensive or targeted alternatives to accomplish the FDIC's goal which

would minimize any burden on small institutions. Typically, when notice and opportunity for comment is involved, comment is sought on these matters. Prior to issuance of a final rule, the potential benefits associated with the regulation are weighed against the potential costs. Both the proposed and final rule should discuss key implications that the FDIC considered in its analysis.

- **Regulations and policies should be clearly, understandably, and concisely written.** The FDIC seeks to make its regulations and statements of policy as clear and as understandable as possible to those persons who are affected by them. In developing or reviewing existing regulations and statements of policy, the FDIC considers the document's organizational structure, as well as the specific language used and the target audience; all are important components to achieving a clear and useful statement.

- **The public should have a meaningful opportunity to participate in an open and transparent rulemaking process.** The FDIC encourages public participation in the rulemaking process. Whether a new regulation is being promulgated or an existing one revised, the Board gives careful consideration to the implications of its actions as public policy. Public participation in the rulemaking process is an opportunity for the Board to hear directly from affected members of the public with important experience and insights related to the pertinent issues. As part of this, the FDIC recognizes the importance of providing adequate time for the public comment process and thus, generally provides a 60-day comment period. Under appropriate circumstances, the FDIC may provide a longer comment period and, occasionally, as permitted by the Administrative Procedure Act (APA), a shorter comment period if quicker action is needed. A person or organization may petition the Board for the issuance, amendment, or repeal of any regulation or policy by submitting a written petition to the Executive Secretary

of the FDIC. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

All rulemaking is carried out in accordance with the APA (as well as other applicable law<sup>1</sup>), and the Board provides the public with notices of proposed rulemaking and opportunities to submit comments on the proposals. The Board also may seek public comment on proposed statements of policy as well. All comments and proposed alternatives received during the comment period are carefully considered prior to the issuance of a final rule or statement of policy. The Board takes final action on proposed regulations and policies as promptly as circumstances allow. If a significant period of time elapses following the publication of a proposed rule or statement of policy without final action, the Board will consider withdrawing the proposal or republishing it for comment. If the Board decides to reconsider a proposed regulation or statement of policy that has been withdrawn, it will begin the rulemaking or policy development process anew.

The FDIC Board typically considers proposed and final regulations at meetings open to the public. The written recommendations of FDIC staff are made available on the FDIC's public website, and the FDIC also broadcasts public Board meetings live over the Internet. Comment letters on pending proposed rules or statements of policy can be submitted electronically through the FDIC's public website, and all letters are posted on the FDIC's public website for easy access by all interested parties. In addition, the FDIC posts notices of meetings held with outside parties commenting on pending rulemakings during the comment period and may, in appropriate circumstances, hold roundtable discussions on issues of particular importance.

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<sup>1</sup> In addition to specific statutory provisions necessitating an implementing rulemaking or statement of policy, other applicable law includes the Regulatory Flexibility Act, Paperwork Reduction Act, Section 722 of the Gramm-Leach-Bliley Act, the Plain Writing Act of 2010, Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, Small Business Regulatory Enforcement Fairness Act, and Economic Growth and Regulatory Paper Reduction Act of 1996.

**• Common or overlapping statutory and supervisory requirements should be implemented by the Federal financial institutions regulators in a coordinated way.** The FDIC has many statutory and supervisory requirements that are common to the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, and some are common to the Consumer Financial Protection Bureau, and/or the National Credit Union Administration. The more uniform the Federal financial institutions regulators can be in their regulations, policies and approaches to supervision, the easier it will be for the industry and the public to comply with the regulators' requirements. The FDIC is a member of the Federal Financial Institutions Examination Council (FFIEC) and works with the other federal financial institutions regulators through the FFIEC to make uniform those regulations and policies that implement common statutory or supervisory policies.

Moreover, other statutory and supervisory requirements may overlap either in substance or in effect on other participants in the financial sector. As a result, coordination with other regulators (such as the Securities and Exchange Commission, Commodity Futures Trading Commission, and Federal Housing Finance Agency) has become more common. Some rulemakings also require consultation with the Financial Stability Oversight Council. Where required by law or otherwise appropriate, interagency working groups consult or collaborate to develop rules and policy statements to identify interactions and promote consistency.

### *III. Periodic Review of Existing Regulations and Statements of Policy.*

To ensure that the FDIC's regulations and written statements of policy are current, effective, and efficient, and continue to meet the principles set forth in this Policy, the FDIC periodically undertakes a review of each regulation and statement of policy. Sometimes, this review is done

in conjunction with a change to a regulation or policy statement triggered by a change in the law. In addition, under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 and in conjunction with other FFIEC agencies, the FDIC conducts a comprehensive review of its regulations, at least once every ten years, to identify any outdated, unnecessary, or unduly burdensome regulatory requirements imposed on financial institutions. The FDIC also may initiate a targeted review in a specific area based on changes in the markets or observations at bank examinations, for example.

Factors to be considered in determining whether a regulation or written policy should be revised or eliminated include: the continued need for the regulation or policy; opportunities to simplify or clarify the regulation or policy; the need to eliminate duplicative and inconsistent regulations and policies; and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation or policy. The result of this review will be a specific decision for each regulation and statement of policy to retain, revise, or rescind it. The principles of regulation and statement of policy development, as articulated in this Policy, will apply to the periodic reviews as well.

By order of the Board of Directors.

Dated at Washington, D.C. this 11<sup>th</sup> day of April, 2013.

Federal Deposit Insurance Corporation

Robert E. Feldman

*Executive Secretary.*

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